

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department on Disability Services

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Department on Disability Services: Developmental Disabilities Administration	Policy Number: 4.5
Responsible Program or Office: Case Management	Number of Pages: Four (4)
Date of Approval by the Director: October 10, 2007	Number of Attachments: Seven (7)
Effective Date: October 10, 2007	Expiration Date, if Any:
Supercedes Policy Dated:	
Cross References and Related Policies:	
Subject: DDA Substitute Decision-making for Emergency Care and Urgent Care Medical Needs	

1. PURPOSE:

To establish procedures and standards to obtain substitute healthcare decision-makers for individuals receiving services from the Developmental Disabilities Administration (DDA) who have been assessed to lack the capacity to make or effectively communicate medical decisions for themselves, and who: (1) have emergency care or urgent care medical needs, and (2) do not have an identified substitute healthcare decision-maker.

2. APPLICABILITY:

This policy applies to all employees of the Department on Disability Services and all individuals and agencies that provide services and supports to persons with mental retardation and developmental disabilities through funding, contract or provider agreement with the District of Columbia. All staff, subcontractors and consultants of such agencies, and volunteers or other persons recruited to provide services and supports on behalf of the persons with mental retardation and developmental disabilities are subject to the requirements of this policy.

3. DEFINITIONS:

Capacity: The mental ability to understand the nature and implication of a decision (that there is a choice to be made) and the information (the alternatives) being presented; as well as, the ability to communicate that decision or give informed consent.

Emergency Care: Immediate treatment, including diagnostic treatment, provided in response to sudden, acute, and unanticipated medical crisis in order to avoid injury, extreme pain, impairment, or death of the individual, as defined in D.C. Official Code § 21-2011(5C).

Individual Support Plan (ISP): A written statement developed by a planning team chosen, whenever possible, by the person receiving DDA services or his/her guardian. The ISP serves as the single document that integrates all services and supports a person may receive irrespective of where the person resides. The ISP integrates the Plan of Care (POC) required by the District of Columbia's Home and Community-Based Waiver and by Medicaid for nursing homes. The ISP presents the measurable goals and objectives identified as required for meeting the person's preferences, choices, and desired outcomes. The ISP also addresses the provision of safe, secure and dependable services and supports that are necessary for the person's well being, independence and social inclusion.

Limited Guardian: An individual who is appointed by the court to exercise the legal rights and powers specifically designated by the court order. In the District of Columbia, this guardian is specifically designated to handle only those matters specified by the court (e.g., limited guardian for healthcare decisions, limited guardian for financial matters).

Permanent Limited Guardian for Healthcare Decisions: An individual who is appointed by a court order to make medical decisions based on substituted judgment as a guardian for someone else pursuant to D.C. Official Code § 21-2047. The individual named as the permanent limited guardian may include but is not limited to the person's parents, siblings, next of kin, court-appointed advocate, court-appointed Probate attorney, or others.

Petition: For purposes of this policy, a written request for the appointment of a guardian, whether permanent or temporary, by the Probate Court.

Substitute Healthcare Decision-Maker: Any individual authorized (by statute or by common law) to make decisions on behalf of another person to give or refuse consent to medical treatment options recommended by the person's physician. The decision whether or not to give consent shall be based on the known wishes of the person, but if the wishes of the person are unknown and cannot be determined, then the decision should be based on a good faith belief as to the best interests of the person.

Substituted Judgment: Making a decision that conforms as closely as possible with the decisions that the individual would have made, based upon knowledge of the beliefs, values, and preferences of the individual, as defined in D.C. Official Code § 21-2011(25A).

Temporary Emergency Guardian for Healthcare Decisions: An individual who is appointed by court order to make medical decisions based on substituted judgment as a guardian for someone else, whose authority is for a specified period of time, and who usually is appointed in an emergency care or urgent care situation pursuant to D.C. Official Code § 21-2046.

Urgent Care: Health care including, but not limited to, circumstances that do not rise to the level of an emergency, but nevertheless require expedited consideration.

4. AUTHORITY:

The authority of this policy is established in the Department on Disability Services as set forth in D.C. Law 16-264, the “Department on Disability Service Establishment Act of 2006,” effective March 14, 2007 (D.C. Official Code § 7-761.01 *et seq.*); D.C. Law 2-137, the “Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978,” effective March 3, 1979 (D.C. Official Code § 7-1301.01 *et seq.*); D.C. Law 16-194, “Health-Care Decisions for Persons with Developmental Disabilities Temporary Amendment Act of 2006,” 53 D.C. Reg. 8656; and *Evans v. Fenty*, Civil Action No. 76-293 (ESH/JMF), Order of September 12, 2007.

5. POLICY:

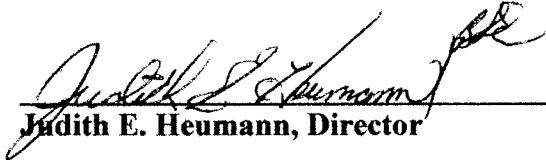
It is the policy of the DDA to ensure that all persons who have been assessed to lack the capacity to make or effectively communicate emergency care or urgent care decisions on their own behalf have available substitute healthcare decision-makers in a timely manner.

6. STANDARDS

DDA shall continue to prioritize obtaining the appointment of substitute healthcare decision-makers for individuals receiving supports and services who have been assessed to lack the capacity to make or effectively communicate medical decisions on their own behalf. For those individuals who have emergency care or urgent care needs, and who do not have an identified substitute healthcare decision-maker, DDA shall establish operating procedures and training as follows:

- For emergency circumstances that do not meet the requirements of D.C. Official Code § 21-2212(c), DDA shall, within three business days of an identified need for emergency care, file a petition with the Probate Court for appointment of a temporary emergency guardian.
- For circumstances that do not rise to the level of an emergency, but nevertheless requiring expedited consideration, DDA shall, within ten business days of an identified urgent care need, file a petition with the Probate Court for appointment of a permanent, limited guardian.
- DDA shall design and implement a training program for case managers, residential providers and healthcare and other medical services providers to educate them on the current legal requirements for substitute healthcare decision-making and the processes and procedures for obtaining the timely appointment of a permanent healthcare guardian or temporary emergency guardian and where necessary, the use

of D.C. Official Code § 21-2212(c), which permits an attending physician to provide treatment in certain identified circumstances without consent if no authorized person is reasonably available.



Judith E. Heumann, Director

10/10/07

Date

Attachments: seven (7)

1. Operational Procedure
2. Guardianship Routing and Approval Form
3. Medical Affidavit
4. Psychological Affidavit
5. Emergency Medical Affidavit
6. Case Management Affidavit
7. Provider Emergency/Urgent Care Guidelines

**Department on Disability Services:
Developmental Disabilities Administration**

Policy Number 4.5

Operational Procedure:

DDA Substitute Decision-making for Emergency Care and Urgent Care Medical Needs

PURPOSE: To establish procedures and standards to obtain substitute healthcare decision-makers for individuals receiving services from the Developmental Disabilities Administration (DDA) who have been assessed to lack the capacity to make or effectively communicate medical decisions for themselves, and who (1) have emergency care or urgent care medical needs, and (2) do not have an identified substitute healthcare decision-maker.

AUTHORITY: The authority of this policy is established in the Department on Disability Services as set forth in D.C. Law 16-264, the “Department on Disability Service Establishment Act of 2006,” effective March 14, 2007 (D.C. Official Code § 7-761.01 *et seq.*); D.C. Law 2-137, the “Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978,” effective March 3, 1979 (D.C. Official Code § 7-1301.01 *et seq.*); D.C. Law 16-194, “Health-Care Decisions for Persons with Developmental Disabilities Temporary Amendment Act of 2006,” 53 D.C. Reg. 8656; and *Evans v. Fenty*, Civil Action No. 76-293 (ESH/JMF), Order of September 12, 2007.

DEFINITIONS:

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(POC) required by the District of Columbia's Home and Community-Based Waiver and by Medicaid for nursing homes. The ISP presents the measurable goals and objectives identified as required for meeting the person's preferences, choices, and desired outcomes. The ISP also addresses the provision of safe, secure and dependable services and supports that are necessary for the person's well being, independence and social inclusion.

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Substituted Judgment: Making a decision that conforms as closely as possible with the decisions that the individual would have made, based upon knowledge of the beliefs, values, and preferences of the individual, as defined in D.C. Official Code § 21-2011(25A).

Temporary Emergency Guardian for Healthcare Decisions: An individual who is appointed by court order to make medical decisions based on substituted judgment as a guardian for someone else, whose authority is for a specified period of time, and who usually is appointed in an emergency care or urgent care situation pursuant to D.C. Official Code § 21-2046.

Urgent Care: Including but not limited to, circumstances that do not rise to the level of an emergency, but nevertheless require expedited consideration.

ROLES AND

RESPONSIBILITY:

This section defines the general roles and responsibilities for the Case Management Division, the Office of the Attorney General, and service and healthcare providers in identifying and obtaining substitute healthcare decision-makers.

Case Management Coordinators
Case Management Supervisor
Case Management Division Chief
Service Planning Program Administrator
Service and Healthcare Providers
Office of the Attorney General, Mental Health Section,
Assistant Attorney General

PROCEDURES:

In order to ensure compliance with the policy, set forth below are the operational procedures to be followed for those individuals who have emergency care or urgent care needs and who do not have an identified substitute healthcare decision-maker:

- 1) When any DDS employee, provider or agent becomes aware that an individual receiving services from DDA has an emergency care or urgent care need, he or she will notify that individual's DDA Case Management Coordinator (CMC) as soon as practicable by email and/or telephone no later than the same day or within one business day.
- 2) When the CMC becomes aware that an individual receiving services from DDA has an emergency care or urgent care need for healthcare, the CMC shall take the following action.
 - a. For an identified **emergency care** need:
 - i. Within **one** business day of an identified need, the CMC shall:
 1. Conference with his or her immediate Case Management Supervisor AND Case Management Division Chief and/or Service Planning Program Administrator to determine whether the need falls within the scope of this policy, and to obtain any technical assistance necessary in implementing these procedures;
 2. Notify the Assistant Attorney General by email and telephone of the identify of the individual in need, nature of emergency healthcare need, and as much relevant information as is currently available;
 3. Hand-deliver to the Assistant Attorney General the completed Guardianship Routing and Approval Form, the most current ISP (including the psychological assessment), and the original signed and notarized CMC affidavit; and
 - ii. Within **two** business days of an identified need:
 1. In cooperation with the provider, the CMC shall obtain the original signed and notarized psychological affidavit, the

- original signed and notarized medical affidavit, and the original signed and notarized emergency medical affidavit;
 2. CMC shall hand-deliver to the Assistant Attorney General the original signed and notarized psychological affidavit, the original signed and notarized medical affidavit, and the original signed and notarized emergency medical affidavit;
 3. Upon receipt of the above-listed documents, the Assistant Attorney General will review for legal sufficiency and discuss the status of the petition with the Case Management team.
 4. CMC will keep the Assistant Attorney General apprised of changes or other developments regarding the nature of the emergency care or urgent care need, and continue to provide as much relevant information as is then currently available.
- iii. Within **three** business days of an identified need, the Assistant Attorney General shall file the petition for appointment of a temporary emergency guardian with the Probate Court.
 - iv. As the case proceeds, the Assistant Attorney General shall keep the Case Management team apprised of the filing and any hearings with the Probate Court. To the extent necessary, members of the Case Management team and knowledgeable provider representatives will make themselves available for consultation and attendance at the court hearings with requested medical records.
 - v. Upon appointment of a temporary emergency guardian, the Assistant Attorney General shall update MCIS and relevant guardianship tracking charts.
- b. For an identified **urgent care** need:
 - i. Within **five** business days of an identified urgent care need, the CMC shall:
 1. Conference with his or her immediate Case Management Supervisor AND Case Management Division Chief and/or Service Planning Program Administrator to determine whether the need falls within the scope of this policy, and to obtain any technical assistance necessary in implementing these procedures;
 2. Notify the Assistant Attorney General by email and telephone of the identify of the individual in need, nature of urgent healthcare need, and as much relevant information as is currently available;
 3. Hand-deliver to the Assistant Attorney General the completed Guardianship Routing and Approval Form, the most current ISP (including the psychological assessment), and the original signed and notarized CMC affidavit; and

- ii. Within **seven** business days of an identified urgent care need:
 - 1. In cooperation with the provider, the CMC shall obtain the original signed and notarized psychological affidavit, and the original signed and notarized medical affidavit;
 - 2. CMC shall hand-deliver to the Assistant Attorney General the original signed and notarized psychological affidavit, and the original signed and notarized medical affidavit;
 - 3. Upon receipt of the above-listed documents, the Assistant Attorney General will review for legal sufficiency and discuss the status of the petition with the Case Management team.
 - 4. CMC will keep the Assistant Attorney General apprised of changes or other developments regarding the nature of the emergency care or urgent care need, and continue to provide as much relevant information as is then currently available.
 - iii. Within **ten** business days of an identified urgent care need, the Assistant Attorney General shall file the petition for appointment of a permanent limited guardian with the Probate Court.
 - iv. As the case proceeds, the Assistant Attorney General shall keep the Case Management team apprised of the filing and any hearings with the Probate Court. To the extent necessary, members of the Case Management team and knowledgeable provider representatives will make themselves available for consultation and attendance at the court hearings with requested medical records.
 - v. Upon appointment of a permanent limited guardian, the Assistant Attorney General shall update MCIS and relevant guardianship tracking charts.
- 3) In instances where the petition for permanent limited guardianship is pending already, and the medical need becomes an emergency care or urgent care situation, the Assistant Attorney General shall petition the court to expedite the hearing on an emergency basis. If requested by the Assistant Attorney General in a particular case, the CMC shall obtain and deliver to the Assistant Attorney General an original signed and notarized emergency medical affidavit before the date of the expedited hearing.
- 4) If this is a dire emergency that cannot wait for an emergency guardian to be appointed by the Probate Court, the treating physician (who also may be the primary care physician) should be reminded by the CMC or the provider of the ability to employ the two-professional rule from D.C. Official Code § 21-2212(c):

Emergency health care may be provided without consent to a patient who is certified incapacitated under § 21-2204 if no authorized person is reasonably available or if, in the reasonable medical judgment of the

attending physician, attempting to locate an authorized person would cause: (1) A substantial risk of death; (2) The health of the incapacitated individual to be placed in serious jeopardy; (3) Serious impairment to the incapacitated individual's bodily functions; or (4) Serious dysfunction of any bodily organ or part.

- 5) DDA shall design and implement a training program for case managers, residential providers and healthcare and other medical services providers to educate them on the current legal requirements for substitute healthcare decision-making, and these processes and procedures for obtaining the timely appointment of a permanent healthcare guardian or temporary emergency guardian and where necessary, the use of D.C. Official Code § 21-2212(c), which permits an attending physician to provide treatment in certain identified circumstances without consent if no authorized person is reasonably available.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT ON DISABILITY SERVICES**



When faced with a healthcare situation for a person receiving services from the Department on Disability Services (DDS) who is in need of a court-appointed medical guardian, please ask:

Is this healthcare situation an EMERGENCY CARE situation?

- 1) Ask the treating physician (or the primary care physician) if this is a situation requiring **Emergency Care**: Immediate treatment, including diagnostic treatment, provided in response to sudden, acute, and unanticipated medical crisis in order to avoid injury, extreme pain, impairment, or death of the person. If the treating physician agrees that this is an EMERGENCY, ask him or her to complete, sign and notarize the Emergency Medical Affidavit.
- 2) Contact the DDS Case Management Coordinator and/or DDS Case Management Supervisor immediately and provide as much information as possible, as DDS is required to file a petition for an emergency guardian within 3 days.
- 3) Work with the Case Management Coordinator to obtain as quickly as possible the three original, signed and notarized affidavits: (a) the Medical Affidavit, (b) the Psychological Affidavit, and (c) the Emergency Medical Affidavit (from the treating physician, if possible, or the primary care physician otherwise).
- 4) **REMEMBER**, if this is a dire emergency that cannot wait for an emergency guardian to be appointed by the Probate Court, the treating physician (who also may be the primary care physician) should employ the two-professional rule from D.C. Official Code § 21-2212(c):
Emergency health care may be provided without consent to a patient who is certified incapacitated under § 21-2204 if no authorized person is reasonably available or if, in the reasonable medical judgment of the attending physician, attempting to locate an authorized person would cause: (1) A substantial risk of death; (2) The health of the incapacitated individual to be placed in serious jeopardy; (3) Serious impairment to the incapacitated individual's bodily functions; or (4) Serious dysfunction of any bodily organ or part.

Is this healthcare situation an URGENT CARE situation?

- 1) If the treating physician (or the primary care physician) does not think the situation is an emergency, but it still needs attention as quickly as possible OR, if in the reasonable judgment of a lay person, this situation requires attention as quickly as possible, then this is a situation requiring **Urgent Care**: Health care including, but not limited to, circumstances that do not rise to the level of an emergency, but nevertheless require expedited consideration.
- 2) Contact the Case Management Coordinator and/or Case Management Supervisor immediately and provide as much information as possible, as DDS is required to file a petition for a permanent limited guardian within 10 days. The Assistant Attorney General will likely ask for an expedited hearing to ensure that a guardian is in place as quickly as possible.
- 3) Work with the Case Management Coordinator to obtain as quickly as possible the two original, signed and notarized affidavits: (a) the Medical Affidavit, and (b) the Psychological Affidavit.

If this is not an Emergency Care or Urgent Care situation based on the answers to the questions above, please follow the procedures for the appointment of a permanent limited guardian for healthcare decisions.

Medical Affidavit

I, _____, being first duly sworn, depose and say as follows:

1. I am a physician employed by the _____. My specialty is _____.
2. I received my degree from _____ in _____. After completion of a residency in _____ at _____, I became employed at/began to consult for _____.
3. _____ is a _____ year-old _____ whom I examined on _____ for the purpose of _____.
4. _____'s present condition is/diagnoses are as follows:

5. It is my opinion that because of his/her mental condition as evidenced above, _____ is unable to receive and evaluate information effectively, or her ability to communicate decisions is impaired to such an extent that he/she lacks the capacity to take actions to:
 - ☐ obtain, administer and dispose of real and personal property, intangible property, benefits and income AND/OR
 - ☐ provide health care, food, shelter, clothing, personal hygiene and other care without serious physical injury or illness is more likely than not to occur AND/OR
 - ☐ acquire and maintain those life skills that enable him/her to cope more effectively with the demands of his/her life.
5. Based on the information above, I affirm that _____ is unable to make decisions and provide consent for medical treatment.

Physician's Signature

Physician's Name (printed)

Street Address

Phone number/Pager number

Subscribed and sworn this _____ day of _____ 200__.

Notary Public

My commission expires:

PSYCHOLOGIST'S AFFIDAVIT

I, _____, being first duly sworn, depose and say the following:

1. I am a licensed psychologist and consult to _____. I have consulted to _____ since _____.
2. I received my degree in _____ from _____ in _____.
3. I have known _____ since _____. I have provided services to him/her since _____. In that regard, I have seen _____ on numerous occasions, with the most recent psychological assessment completed on _____. I have also reviewed _____'s records and discussed him/her with other interdisciplinary team members. Based on my observations, my assessment, my review of the record and my discussion with other staff, it is my opinion that his/her cognitive functioning falls within the _____ range of mental retardation and adaptive functioning falls within the _____ range of mental retardation.
4. _____ most recent psychological assessment is attached and discusses _____'s present mental health condition and treatment plan.
5. It is my opinion that because of _____'s mental retardation as evidenced above, _____ is:

Able Not Able

- | | | |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | To obtain, administer, and dispose of real and personal property, intangible property, business property, benefits and income;
AND |
| <input type="checkbox"/> | <input type="checkbox"/> | To provide health care, food, shelter, clothing, personal hygiene, and other care without which serious physical injury is more likely than not to occur;
AND |
| <input type="checkbox"/> | <input type="checkbox"/> | To acquire and maintain those life skills that enable him/her to cope more effectively with the demands of his/her own person and of his/her own environment, and to raise the level of his/her physical, intellectual, social, emotional, and economic efficiency or meet all or some of essential requirements for his/her therapeutic needs;
AND |
| <input type="checkbox"/> | <input type="checkbox"/> | To grant, refuse or withdraw consent to any medical treatment;
AND |
6. It is my opinion that, due to his/her mental retardation as evidenced above, _____ is:
- | | |
|--------------------------|--|
| <input type="checkbox"/> | With proper explanation at a level suitable to his/her functioning, able to choose the person he/she desires to make decisions for him/her, and could execute a durable power of attorney. |
| <input type="checkbox"/> | Not able to execute a durable power of attorney. |

Licensed Psychologist Signature

Psychologist's Name(PRINTED): _____

Address: _____

Phone Number/Pager Number: _____

Sworn and subscribed before me the _____ day of _____, 200 ____.

Notary Public

My commission expires: _____

Medical Affidavit (Emergency Treatment)

I, _____, being first duly sworn, depose and say as follows:

1. I am a physician employed by the _____. My specialty is _____.
2. I received my degree from _____ in _____. After completion of a residency in _____ at _____, I became employed at _____.
3. _____ is a _____ year-old _____ whom I examined on _____ for the purpose of _____.
_____.
4. _____'s present condition is as follows:

_____.

It is my opinion that because of his/her mental condition as evidenced above, _____ is unable to receive and evaluate information effectively, or her ability to communicate decisions is impaired to such an extent that he/she lacks the capacity to take actions to:

- ☐ obtain, administer and dispose of real and personal property, intangible property, benefits and income.
and/or
- ☐ provide health care, food, shelter, clothing, personal hygiene and other care without serious physical injury or illness is more likely than not to occur
and/or
- ☐ acquire and maintain those life skills that enable him/her to cope more effectively with the demands of his/her life.

5. The risks of the treatment/procedures are: _____

_____.
6. This procedure is necessary because: _____

_____.

7. In my professional opinion, this condition constitutes an emergency. This treatment is urgently necessary and needs to be completed as soon as possible because

Physician's Signature

Physician's Name (printed)

Street Address

City, State and Zip Code

Phone number/Pager number

Subscribed and sworn this _____ day of _____ 200__.

Notary Public

My commission expires:

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT ON DISABILITY SERVICES**



CASE MANAGER'S AFFIDAVIT

I, **INSERT CASE MANAGER NAME**, Case Management Coordinator, being duly sworn, depose and say the following:

1. I am the Case Management Coordinator employed at the Department on Disability Services (DDS). I have been employed by DDS since **INSERT START DATE/YEAR**.
2. I am the Case Management Coordinator assigned to oversee and assess the psychosocial needs of **INSERT CONSUMER'S NAME**. **CONSUMER NAME** has been assigned to my caseload since **DATE**. He has been observed monthly with information and observations noted in his case notes.
3. **CONSUMER NAME** was born in **PLACE OF BIRTH** on **CONSUMER's BIRTHDATE**. He is **AGE** years of age.
4. **CONSUMER NAME**'s current residence is located at **COMPLETE ADDRESS, CITY, STATE, ZIPCODE**. It is an **TYPE OF PLACEMENT** (i.e. Intermediate Care Facility, etc.) for persons with mental retardation, operated by **PROVIDER COMPANY**, where he/she receives therapeutic, behavioral and medical treatment.
5. **CONSUMER NAME** functions in the **RANGE** range of mental retardation cognitively and in the **RANGE** range adaptively. He/She needs assistance and supervision with bathing, dressing and hygiene. He/She does not travel independently nor possess concepts of time or of money. **Adapt these statements to fit your consumer's abilities and needs.**
6. **CONSUMER NAME** receives **type of statutory benefits** in the amount of \$70.00 month. She/He has D.C. Trust account with a balance of \$**BALANCE** as of **DATE CHECKED** and a burial account in the amount of \$ **BALANCE**.
7. **CONSUMER NAME** has no family contacts OR has family, **NAME** and **RELATIONSHIP**, who prefers not to make medical decisions for his son/daughter/etc. Please adapt this paragraph as necessary and be as specific as you can as to dates of last contact, names, addresses, etc.

Case Management Coordinator
Phone number: **PHONE NUMBER**

Sworn and subscribed to before me this ____ day of _____, 20__.

Notary Public

My commission expires: